

CARLOMAGNO V. TORIBIO, COMPLAINANT, VS. ATTY. FERMIN M. OFILAS, CLERK OF COURT VI AND EX-OFICIO SHERIFF, RTC-OCC, SAN MATEO, RIZAL, RESPONDENT.*A.M. No. P-03-1714. February 13, 2004*

Ponente: YNARES-SATIAGO, J.

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As the custodians of the court's funds, revenues, records, properties and premises, clerks of court perform very delicate functions and are liable for any loss, shortage, destruction or impairment thereof.[1] It is presumed that they have familiarized themselves with the various statutes and administrative circulars pertinent to their functions to effectively discharge their duties and responsibilities. Aside from being the custodian of the court's funds and property, a clerk of court is also entrusted with the responsibility of implementing regulations regarding fiduciary funds.[2] No protestations of good faith can justify non-compliance with the circulars designed to promote full accountability of government funds.[3]

On August 19, 2002, Carlomagno Toribio, acting on behalf of the Spouses Iluminada A. Zuasola and Roger V. Zuasola, filed a letter-complaint against Atty. Fermin M. Ofilas, Clerk of Court VI and Ex-Oficio Sheriff, RTC-OCC, San Mateo, Rizal with the Office of the Court Administrator.[4] Together with the letter-complaint, Toribio filed the Affidavit-Complaint[5] of the Zuasola spouses, stating that on October 1, 1999, Iluminada sought to redeem a parcel of land from Ernesto E. Braña; that the land had been mortgaged by her brother, Wilfredo Antonio, to Braña to secure payment of a loan; that the mortgage was foreclosed and the property sold at public auction to Braña for P3,000,000.00; that Mrs. Zuasola deposited with respondent clerk of court the amount of P3,108,070.00, consisting of P108,070.00 in cash[6] and P3,000,000.00 in Manager's Check,[7] issued by the RCBC Savings Bank, San Mateo, Rizal Branch; that respondent executed a Deed of Redemption[8] dated October 1, 1999 in favor of Iluminada.

Thereafter, Iluminada learned that on January 12, 2000, Braña executed an Affidavit of Consolidation stating that there was no valid redemption of the property. It was discovered that the RCBC Manager's Check entrusted to respondent was deposited in his personal account in the Merchant Bank, San Mateo, Rizal Branch under Savings Account No. 50000357 on October 5, 1999.

The money earned interest in respondent's personal account. On October 12, 2000, respondent transferred the amount of P3,640,278.00 in the Sheriff's Trust Fund to the Land Bank of the Philippines, but the redemption period had by then expired.

Wilfredo Antonio, brother of Iluminada A. Zuasola, likewise executed an affidavit stating that his sister withdrew her intent to redeem the property because Braña had demanded the sum of P12,776,053.32. Iluminada thereafter tried to recover the entire deposit from respondent, who returned the amount, less the charges for the redemption.

In his Comment,[9] respondent alleged that the objective of the complainants was to recover the interest earned by the redemption money. He stated that on October 1, 1999, before the expiry of the one-year redemption period,

the mortgagor, Wilfredo Antonio, through his sister Iluminada, tendered the sum of P3,000,000.00 in RCBC Manager's Check No. 038375 and cash amounting to P108,070.00.[10] That afternoon, Iluminada tendered another cash amount of P336,000.00 as additional redemption money. On October 4, 1999, he notified[11] Braña about Zuasola's intention to redeem the property and advised him to claim the redemption money at his office and to surrender the title OCT No. P-935.

Since the Manager's Check was drawn in the name of respondent, he deposited the check in his personal account for purposes of expediency.

Braña did not get in touch with respondent, instead he filed an Affidavit of Adverse Claim on October 27, 1999 which was annotated by the Register of Deeds on the title to the property.

Braña's counsel informed respondent that his client did not accept the redemption money paid by Zuasola because the amount tendered was insufficient.

On October 4, 2000, respondent received a demand letter from Wilfredo Antonio's lawyer for the release of the interest earned by the redemption money in the bank.

Respondent deposited the money together with the interests in the Sheriff's Trust Fund (STF) Savings Account in Land Bank, Marikina City, amounting to P3,640,278.00.

Respondent sent a query as to who was entitled to the accrued interest of the redemption money withdrawn and whether or not a court order was necessary to withdraw it inasmuch as, he was not familiar with the Sheriff's Trust Fund.[12] However, there was no answer by the OCA.

On September 10, 2001, respondent withdrew from the STF the total accrued interest amounting to P239,065.00,[13] and deposited it to the National Treasury, pursuant to Circular No. 50-95.[14]

On January 23, 2002, the OCA wrote to respondent stating that since the redemptioner opted not to exercise his right of redemption, the money should accrue to him. The interest, on the other hand, earned on the deposit of redemptioner's money accrued to the Judiciary Development Fund (JDF), pursuant to paragraph e (2) of A.M. No. 99-8-01-SC.

On March 5, 2002, respondent withdrew the money from the STF, deducting therefrom the sum of P34,640.00, which he deposited with the JDF.[15] He released to Florencia Fernando, the representative of the Zuasolas, the sum of P3,409,429.30.[16]

In compliance with the Resolution of the Court dated July 14, 2003, respondent manifested his willingness to have the case resolved on the basis of the pleadings and records filed.

The sole issue in this case is whether or not respondent is liable for depositing the funds entrusted to him to his personal savings account.

The OCA found that respondent was not culpable but recommended censure for commingling the money of the Zuasolas with his personal funds.

We agree with the OCA's recommendation that respondent should be held liable; however, we hold that a reprimand of respondent, rather than a mere censure, is commensurate to the degree of his misconduct.

It is clear from the records that respondent deposited the money of the Zuasolas in his personal account, because the Manager's check was in his name. Being the custodian of the court's funds and revenues, respondent should have taken the proper steps to correct the error. He did not. While there is no sufficient showing that he had improper motives for depositing the said amount in his personal account, he must be held administratively liable

for commingling these funds with his own.

Clerks of Court are officers of the law who perform vital functions in the prompt and sound administration of justice.[17] They perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises.[18] They generally are also the treasurer, accountant, guard and physical plant manager thereof.[19] As such, they are liable for any loss, shortage, destruction or impairment of such funds and property.[20]

Section B (4) of SC Circular No. 50-95 on the collection and deposit of court fiduciary funds mandates that:

(4) All collections from bail bonds, rental deposits, and other fiduciary funds shall be deposited within twenty-four (24) hours by the Clerk of Court concerned upon receipt thereof with the Land Bank of the Philippines.

Along the same vein, SC Circular Nos. 13-92 and 5-93 provide the guidelines for the proper administration of court funds. SC Circular No. 13-92 commands that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank."

Clerks of Court are reminded to deposit immediately with authorized government depositaries the various funds they have collected because they are not authorized to keep those funds in their custody.[21] The unwarranted failure to fulfill these responsibilities deserves administrative sanction and not even the full payment, as in this case, will exempt the accountable officer from liability.[22]

Respondent does not deny having made late remittances and that he commingled the subject funds with his own. However, he claims that "his lack of knowledge about the STF was the reason he deposited the check to his personal account." [23] According to him, the STF is not a very popular account among Clerks of Court and Ex Oficio Sheriffs, [24] and that upon inquiries made among his peers in Morong, Antipolo, Marikina, Pasig, Valenzuela and Quezon City, he found that none has opened or maintained the STF.

This notwithstanding, we are not inclined to be sympathetic to respondent because he cannot plead his lack of knowledge or ignorance as an excuse. He is presumed to know his functions and responsibilities which, among others, include a working knowledge of the STF. As a Clerk of Court, respondent is expected to keep abreast of all applicable laws, jurisprudence and administrative circulars pertinent to his office.

Respondent therefore is guilty of violating the above SC Circulars. Under Rule XIV, Section 23 of the Civil Service Rules, the violation of reasonable office rules and regulations is considered a light offense which is punishable, in the first instance, by reprimand.

WHEREFORE, in view of all the foregoing, respondent Clerk of Court Fermin M. Orfilas is REPRIMANDED for violation of Section B (4) of SC Circular No. 50-95 and SC Circular No. 13-92. He is likewise STERNLY WARNED that a repetition of the same or a similar offense will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Carpio and Azcuna, JJ., concur.

[1] OCA v. Orbigo-Marcelo, 416 Phil. 356 (2001); citing Re: Financial Audit in RTC, General Santos City, 338 Phil. 13 (1997); citing OCA v. Bawalan, A.M. No. P-93-945, 24 March 1994, 231 SCRA 408.

[2] Pace v. Leonardo, A.M. No. P-03-1675, 6 August 2003.

[3] *Mallare v. Ferry*, 414 Phil. 286 (2001); citing Report on the Financial Audit in RTC, General Santos City and the RTC & MTC of Polomolok, South Cotabato, 384 Phil. 155 (2000).

[4] Rollo, p. 1.

[5] *Id.*, pp. 8-10.

[6] *Id.*, p. 30.

[7] *Id.*, p. 32.

[8] *Id.*, p. 52.

[9] *Id.*, p. 36.

[10] *Id.*, p. 51.

[11] *Id.*, p. 54.

[12] *Id.*, p. 59.

[13] *Id.*, p. 69.

[14] *Id.*

[15] *Id.*, pp. 71-72.

[16] *Id.*, p. 73.

[17] *Reyes-Domingo v. Morales*, A.M. No. P-99-1285, 4 October 2000, 342 SCRA 6; *Escañan v. Monterola*, A.M. No. P-99-1347, 6 February 2001, 351 SCRA 228.

[18] § B, Chapter I, 2002 Revised Manual for Clerks of Court, p. 4; *OCA v. Marcelo*, A.M. No. P-00-1415-MeTC, 416 Phil. 356 (2001).

[19] § B, Chapter I, 2002 Revised Manual for Clerks of Court, p. 4.

[20] *Nones v. Ormita*, A.M. No. P-01-1532, 9 October 2002, 390 SCRA 519; citing *OCA v. Bawalan*, *supra*.

[21] *OCA v. Galo*, 373 Phil. 483 (1999); Re: Report on the Judicial and Financial Audit of RTC-Branch 4, Panabo, Davao del Norte, 351 Phil. 1 (1998); *Ferriols v. Hiam*, A.M. No. P-90-414, 9 August 1993, 225 SCRA 206.

[22] Re: Withholding of Other Emoluments of the following Clerks of Court: Elsie R. Remoroza of the Municipal Trial Court (MTC) of Mauban, Quezon; Elena P. Reformado of the MTC OF Guinayangan, Quezon; Eugenio Sto. Tomas of the MTC of Cabuyao, Laguna; Maura D. Campano of the MTC of San Jose, Occidental Mindoro; Eleanor D. Flores of the Municipal Circuit Trial Court (MCTC) of Taytay, Palawan; and Jesusa P. Benipayo of the MCTC of Ligao, Albay, A.M. No. 01-4-133-MTC, 26 August 2003; citing Re: Report of Regional Coordinator Felipe B. Kalalo on Alleged Anomalies Involving JDF Collections in MTCC, Angeles City, and MCTC, Minalin, Pampanga, 326 Phil. 703 (1996); *OCA v. Galo*, *supra*.

[23] Comment, p. 13; Rollo, p. 48.

[24] *Id.*

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